UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Milwaukee, Wisconsin

CURWOOD, INC., a Division of BEMIS COMPANY, INC.

Employer

and **Cases 30-RC-6203**
30-RC-6204

FOX VALLEY LOCAL 77-P, GRAPHIC COMMUNICATIONS CONFERENCE OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS[1]

Petitioner

SUPPLEMENTAL DECISION[2]

The Petitioner seeks to represent a bargaining unit of production employees at the Employer's Oshkosh, Wisconsin facilities. The Petitioner originally filed petitions on May 8, 2000,[3] and an election was held on July 20 and 21, 2000. Following a post-election hearing, the Board found the Employer engaged in objectionable conduct and unfair labor practices that interfered with the election. As part of the remedy addressing the Employer's conduct, the Board directed that the results of the election be set aside and a second election be held. The appropriateness of holding a rerun election is now at issue.

The Employer contends a rerun election is not appropriate. Since the filing of the petitions, Petitioner's international union, the Graphic Communications International Union

[1] The name of the Petitioner appears as amended by this Decision and Direction of Election.
[2] Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.
[3] In a Decision and Direction of Election issued June 20, 2000, one bargaining unit consisting of the Employer's

(GCIU), merged with the International Brotherhood of Teamsters (IBT) to become the Graphic Communications Conference of the International Brotherhood of Teamsters (GCCIBT). Additionally, the IBT disaffiliated from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO). As a result of these changes, the Employer argues the petitions should be dismissed, or, alternatively, a new showing of interest should be required from the unit employees. I disagree. Contrary to the Employer's assertions, I find these changes do not sufficiently alter the identity of the Petitioner, so as to necessitate either dismissal of the petitions or the demonstration of a new showing of interest.

With this determination, the following employees are a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time production employees, including quality assurance employees, warehouse employees, truck drivers and general workers employed by the Employer at its Bemis Converter Films, Bemis Specialty Films and Curwood Specialty Films facilities at Oshkosh, Wisconsin, but excluding all part-time employees, maintenance employees, office clerical employees and all professional employees, guards and supervisors as defined in the Act.[4]

FACTS

The Petitioner filed the original petitions for election on May 8, 2000. Following an election held on July 20 and 21, 2000, which the Union lost by a vote of 386 to 257, there was litigation spanning several years over objectionable conduct and unfair labor practices committed by the Employer during the union campaign. The Board issued its Decision and Order on August 21, 2003,[5] and the Court of Appeals for the Seventh Circuit issued a decision dated

three Oshkosh, Wisconsin facilities was found to be an appropriate unit.

[4] The parties filed post-hearing briefs that were duly considered. The hearing officer's rulings made at the hearing were free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. The Petitioner, a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

[5] 339 NLRB 1137 (2003).

February 9, 2005,[6] which enforced, vacated, and remanded in part, the Board's decision. Following the decision of the Court of Appeals, the General Counsel made a motion, consistent with a withdrawal request from Petitioner, withdrawing the sole portion of the unfair labor practice case still unresolved. The Board issued a supplemental order granting the motion on July 20, 2005. As the Employer contests the appropriateness now of holding a rerun election, a notice of hearing was issued by the undersigned on December 5, 2005, pursuant to which a hearing was held on December 15, 2005.

At the time Petitioner filed its original petitions in 2000, it was known as Graphic Communications Union, Fox Valley Local 77-P, AFL-CIO-CLC. Following a mail-ballot vote of all members of the GCIU, of which Petitioner was a local, the GCIU approved a merger with the IBT, effective January 1, 2005. With the merger, the GCIU became the GCCIBT. However, per the merger agreement, the GCCIBT continues to be governed by the GCIU constitution and operates with the same officers, board members, representatives, organizers and department heads as existed prior to the merger. Though now a participant at the IBT Convention, the Conference is autonomous within the IBT, and retains all of the assets and property of the GCIU. Though now Teamsters, the local unions, including Petitioner, maintain the same leaders, operations, and procedures, and are governed by the same constitution and bylaws as prior to the merger.

On July 25, 2005, the IBT withdrew from the AFL-CIO. This decision was made at the level of the International Union, and did not directly involve Petitioner or the other local unions. The withdrawal from the AFL-CIO has not affected the operations or leadership of Petitioner, and the consequent change is limited to Petitioner's ending per capita payments to the AFL-CIO. The dues and initiation fees paid by members of Petitioner have not changed.

[6] *N.L.R.B. v. Curwood, Inc.*, 397 F.3d 548 (7th Cir. 2005).

DISCUSSION

The Employer focuses on the merger of Petitioner's original international union, GCIU, with the IBT, and the IBT's subsequent disaffiliation from the AFL-CIO to claim the Petitioner has undergone "significant changes." The Employer then argues these changes require dismissing the election petitions, or voiding the previously obtained showing of interest. However, the evidence does not establish that these changes, especially at the local level of Petitioner, alter Petitioner's identity to the degree that either of these actions would be appropriate.

In the analogous bargaining context, a merger or affiliation of a certified union with a national organization does not affect the employer's duty to bargain with the post-affiliation union. See e.g., *Minn-Dak Farmers Cooperative*, 311 NLRB 942 (1993). Rather, an employer seeking to avoid this obligation has the burden of establishing that: (1) the affiliation was not accomplished with minimal due process, or (2) the post-affiliation union lacked substantial continuity with the pre-affiliation union. See e.g., *CPS Chemical Co.*, 324 NLRB 1018 (1997). Although, in the current facts, the question of Petitioner's identity is raised in the election context prior to any certification, a similar analysis is appropriate. Under such an analysis, I find the Employer fails to establish its burden on either of these grounds.

First, the Employer does not contend, and the record does not demonstrate, that the merger and subsequent disaffiliation involving Petitioner were accomplished without the appropriate due process afforded to those affected. Though the employees in the petitioned-for unit did not participate in the processes that brought about these changes to Petitioner, as they were not members of, nor represented by, Petitioner, these employees will now essentially have an opportunity to evaluate and vote on these changes by voting in the representation election.

Any arguable interest the employees in the petitioned-for unit have regarding these changes is therefore protected by the democratic vote for or against representation by the Petitioner.

Second, and more important, the identity of Petitioner, Local 77-P, appears substantially unchanged. In assessing the substantial continuity of the pre-affiliation union, the Board's approach is to compare and contrast the pre- and post-merger representative, weighing such factors as the continued leadership responsibilities of the existing union officials, the continued responsibilities of business agents for the various bargaining units, the perpetuation of membership rights, the qualifications for holding office, the extent of executive board activity, the dues structure, the frequency of membership meetings, the continuation of the manner in which contracts are negotiated and administered and grievances adjusted, and the preservation of the certified representative's physical facilities, books, and assets. See *Quality Inn Waikiki*, 297 NLRB 497 (1989). The Petitioner, a local union, has undergone changes at the national and international levels of its union. However, the evidence established in the record as to the above factors – for example, the responsibilities and identification of existing union officials and bargaining agents – indicates that Petitioner is indeed a substantial continuity of its pre-merger and pre-disaffiliation self.

In this case, despite the merger and disaffiliation from the AFL-CIO, the interests of employees in the petitioned-for unit are protected, and the Petitioner has maintained substantial continuity as an organization since initially seeking to represent the unit of employees at issue. To the degree employees have not been informed as to the effects of the merger, and the Employer views these changes as important to an employee's choice for or against representation, the Employer has a right under Section 8(c) of the Act to express its views to employees prior to the election. It is therefore appropriate to hold an election to determine the

issue of representation.

CONCLUSION

I find the Petitioner, post-merger and post-disaffiliation from the AFL-CIO, has substantially maintained the identity of its pre-merger and pre-disaffiliation self, and it would therefore be inappropriate to dismiss the petitions. Additionally, as an administrative matter, I find that showing of interest is sufficient to support the petitions filed.[7] To the degree Petitioner has changed since filing the petitions, and those changes may affect the desire of employees in the petitioned-for unit either for or against representation by Petitioner, the employees will be able to indicate their preference in a Board-conducted election determining representation.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

[7] The showing of interest is an administrative matter not subject to litigation. *O.D. Jennings & Co.*, 68 NLRB 516 (1946); *Allied Chemical Corp.*, 165 NLRB 235 (1967); *General Dynamics Corp.*, 175 NLRB 1035 (1969). The Board has specifically found a showing of interest obtained prior to a merger still valid for a rerun election scheduled post-merger. See *Monmouth Medical Center*, 247 NLRB 508 (1980). Likewise, the Board has held that authorization cards signed prior to a labor organization's withdrawal from the AFL-CIO were still a valid showing of interest. *Louisiana Creamery, Inc.*, 120 NLRB 170 (1958).

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Fox Valley Local 77-P, Graphic Communications Conference of the International Brotherhood of Teamsters.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company,* 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before January 4, 2006.** No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by January 11, 2006.**

Signed at Milwaukee, Wisconsin on December 28, 2005.

/s/Irving E. Gottschalk

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Irving E. Gottschalk, Acting Regional Director
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